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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,388	07/31/2002	Warrick Smith		5133

7590 04/18/2006  
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EXAMINER

LAUX, JESSICA L

ART UNIT PAPER NUMBER

3635

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/088,388	SMITH, WARRICK	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jessica Laux	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34 is/are allowed.
- 6) ☒ Claim(s) 20-29, 33 and 35-38 is/are rejected.
- 7) ☒ Claim(s) 30-32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

The following office action is in response to the amendment filed on 10/11/2005. The changes to the specification are acknowledged and have been accepted by the examiner. Applicant's arguments to claim 34 have been fully considered and are persuasive. The rejection of claim 34 has been withdrawn. Applicant's arguments in response to claims 20-29 and 35-38 have been fully considered but they are not persuasive. Claims 1-19 have been cancelled in a previous office action. Claims 20-38 are pending in this action.

### ***Claim Rejections - 35 USC § 102***

Claims 25-29 and 35-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Sorton (4,947,616).

In regard to claim 25, Sorton discloses a magnetic holding device comprising an elongate member (14) including at least one magnet (46) and having a substantially flat magnetic surface on or in close proximity to the magnet, wherein the elongate member is capable of holding material between said magnetic surface and a magnetically receptive surface, at least one retaining member (12) is provided on the elongate member, the retaining member having a retaining surface extending from the elongate member at an angle to the substantially flat magnetic surface.

In regard to claims 26 and 27, Sorton discloses the claimed invention, wherein the retaining member is integrally attached to the elongate member.

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In regard to claim 28, Sorton discloses the claimed invention, wherein the retaining member is adjustable having a lip part movable between an extended position in which the lip part presents a retaining surface extending outwardly from the elongate member generally perpendicularly to the substantially flat magnetic surface, and a retracted position. The examiner would like to point out that the retaining member could be rotated so that it's longitudinal axis is parallel with the longitudinal axis of the magnetic member. This could be the "retracted" position. The member could be rotated by loosening the nut on the member 32 enough to allow the members 28, 30 to come out of slot 34. In regards to the applicants arguments that Sorton cannot freely move and must first be lifted way from member 32 to disengage from slot 34 and is therefore not rotatable as set forth in claim 25, examiner respectfully disagrees. The claim simply states that the retaining member is rotatable and does not address the issue of freely rotating. The definition of rotatable, according to <http://lookwayup.com>, is: capable of being rotated. Since the retaining member of Sorton is capable of being rotated outwardly from the elongate member perpendicularly to the flat magnetic surface, and also capable of being rotated to a retractable position in which the retaining surface extends in the longitudinal direction of the elongate member, the claim limitations are met

In regard to claim 29, Sorton discloses the claimed invention, wherein the elongate member comprises a housing containing at least one pair of magnets 46 at longitudinally spaced apart positions of the elongate member, figure 4.

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In regard to claim 35, Sorton discloses the claimed invention, wherein the elongate member is made of wood, col. 2, lines 51-52.

In regard to claims 36-38, Sorton discloses the claimed invention, wherein the at least one magnet is mounted on a surface in a recess of the elongate member, wherein the magnet forms substantially a flat magnetic surface of the device.

***Claim Rejections - 35 USC § 103***

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sorton (4,947,616) in view of Fawcett et al. (5,904,096).

In regard to claim 33, Sorton discloses the claimed invention except for specifically disclosing the use of ferromagnetic material between at least one pair of magnets. Fawcett teaches the use of ferromagnetic material 10 in combination with magnets. It would have been obvious to one having ordinary skill in the art to use ferromagnetic material in Sorton's invention, because said material will create a stronger magnetic bond between the magnets and the objects that are to be held.

Claims 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (5,313,754).

In regard to claims 20-24, Jensen discloses a method of attaching a sheet material (figure 1) to a structure, said method comprising the steps of providing a magnetic holding device 10 comprising a housing 18 including at least one magnet 24 and having a substantially flat magnetic surface on or in close proximity to said magnet, placing a sheet material, figure 1, against at least one magnetically receptive surface 16 of the structure, placing said magnetic holding device with said flat magnetic surface

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against the sheet material to hold the sheet material in place between the magnetic surface and the magnetically receptive surface of the structure so that the sheet material can be secured to the structure. The holding device comprises an elongate member including a plurality of magnets located at spaced intervals along the elongate housing. The holding device also comprises at least one retaining member 20 having a pad with a retaining surface extending from the housing at an angle to the substantially flat magnetic surface for engagement with a surface of one of the frame members extending at an angle to the magnetically receptive surface of the frame member. Jensen does not specifically disclose that a plurality of devices are used. It would have been obvious to use more than one device, because there is usually a plurality of corners in a structure, and each corner would have the magnetically receptive surfaces, which are comprised of ferromagnetic material. Therefore, it would have been obvious to use a plurality of devices to hold the sheet material between said ferromagnetic material and the device. Applicant argues that Jensen does not disclose that the device holds the sheet material in place. The examiner respectfully disagrees. Merriam-Webster Online Dictionary defines to hold as: 2. to keep under restraint; and AskOxford.com defines to hold as: 4. contain or be capable of containing. Even though Jensen uses the device to protect the sheet material at the corner the device is still helping to hold the sheet material against the support because the sheet material is clamped between the support and the device, and since the device of Jensen is capable of containing or keeping under restraint the sheet material, the claimed limitations are met.

***Allowable Subject Matter***

Claims 30-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 34 is allowed.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JL  
03/30/2006



N. Slack  
Primary